

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.44 OF 2007

IN

SUMMONS FOR JUDGMENT NO.134 OF 2006

IN

SUMMARY SUIT NO.3263 OF 2005

Mukesh Sharma

..Appellant.

Vs.

Chandur Moriani

..Respondent.

....

Shri Ramesh Dube-Patil i/b Ajay Misar & Co. for the Appellant.

Shri Ajit Makhijani i/b M.M. Legal Associates for the Respondent.

....

CORAM: R. M. S. KHANDEPARKAR, &
DR. D.Y. CHANDRACHUD, JJ.

9th February, 2007.

P.C. :

The Appellant challenges the order passed by the Learned Single Judge in exercise of powers under Order 37 decreeing the suit on account of failure on the part of the Appellant/ Defendant to file his appearance and further to seek leave to defend. The provisions of Order 37 are very clear to the effect that in case of failure to file appearance by the Defendant within 10 days from the service of summons under the said order the decree has to follow. Accordingly in the case in hand the suit has been

decreed by the impugned order. That being so, no fault can be found with the impugned order nor it warrants interference on the grounds on which the interim order is sought to be challenged. The only ground which is argued in the matter is that since the Appellant is from Delhi, he could not take appropriate steps within a period of 10 days to file his appearance. There is nothing on record to disclose that indeed the Appellant was unable to file his appearance within ten days from service of summons. In the circumstances, the Appeal is summarily dismissed. It is needless to say that this dismissal will not come in the way of the Appellant to move for setting aside the decree in terms of Rule 4 of Order 37 if the Appellant so desires.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)